MT LEGISLATIVE HISTORY

Chapter 47 1981

Bill H _____ S 128 Original bill & hist. ___C

H. Committee on Labor & Employment

Hearing Date(s) 2-17 ___C
2-19 ___C
_____ ___C
_____ ___C

Date Out mt 2-19 ___C

S. Committee on Labor & Employment Relations

Hearing Date(s) 1-20 ___C
1-22 ___C
1-27 ___C
_____ ___C

mt 1-27 ___C

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

TRANSMITTED TO GOVERNOR: 4/23
ACTION: 5/1, SIGNED
CHAPTER 578

SB 127 -- NORMAN, CONOVER, SMITH, ET AL -- AMENDING 37-14-331 TO CLARIFY THE ROLE OF RADIOLOGIC TECHNOLOGISTS.
INTRODUCED: 1/14
REFERRED TO COMMITTEE ON PUBLIC HEALTH: 1/14
HEARING: 1/21
REPORT: 1/26, DO PASS, AS AMENDED
2ND READING: 1/28, DO PASS
3RD READING: 1/30, YEAS: 49; NAYS: 0

TRANSMITTED TO HOUSE: 1/30
REFERRED TO COMMITTEE ON HUMAN SERVICES: 1/31
HEARING: 3/4
REPORT: 3/5, BE CONCURRED IN, AS AMENDED
2ND READING: 3/10, YEAS: 76; NAYS: 0
3RD READING: 3/12, YEAS: 96; NAYS: 0

RETURNED TO SENATE WITH AMENDMENTS: 3/12
2ND READING: 3/17, BE CONCURRED IN
3RD READING: 3/19, YEAS: 48; NAYS: 0

TRANSMITTED TO GOVERNOR: 3/23/81
ACTION: 3/26, SIGNED
CHAPTER 150

SB 128 -- NORMAN, ELLIOTT -- AMENDING 39-71-116 TO REQUIRE A DISABILITY TO BE SUPPORTED BY A PREPONDERANCE OF MEDICAL EVIDENCE.
INTRODUCED AND REFERRED TO COMMITTEE ON LABOR AND EMPLOYMENT: 1/14
HEARING: 1/20
REPORT: 1/27, DO PASS
2ND READING: 1/29, DO PASS
3RD READING: 1/31, YEAS: 48; NAYS: 0

TRANSMITTED TO HOUSE: 1/31
REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT: 2/2
HEARING: 2/17
REPORT: 2/19, BE CONCURRED IN
ON MOTION, 2/20, PASSED CONSIDERATION TO THE 46TH LEGISLATIVE DAY.
2ND READING: 3/2, YEAS: 86; NAYS: 5
3RD READING: 3/4, YEAS: 93; NAYS: 6

RETURNED TO SENATE: 3/4
TRANSMITTED TO GOVERNOR: 3/7
ACTION: 3/12, SIGNED
CHAPTER 47

SB 129 -- TURNAGE, NORMAN -- REGULATING CONVERSIONS OF GROUP LIFE AND DISABILITY INSURANCE...
INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH: 1/14
HEARING: 2/6
REPORT: 2/21, DO PASS AS AMENDED
2ND READING: 2/25, DO PASS AS AMENDED
ON MOTION, 2/25, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 2/25, YEAS: 49; NAYS: 0

TRANSMITTED TO HOUSE: 2/25
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 3/2
HEARING: 3/11
REPORT: 3/13, BE CONCURRED IN, AS AMENDED
2ND READING: 3/30, YEAS: 87; NAYS: 5
3RD READING: 3/31, YEAS: 87; NAYS: 8

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/9, BE NOT CONCURRED
ON MOTION, 4/11, REFERRED TO FREE CONFERENCE COMMITTEE

FREE CONFERENCE COMMITTEE REPORT NO. 1: 4/22
HOUSE
2ND READING: 4/23, YEAS: 82; NAYS: 0
ON MOTION, 4/23, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/23, YEAS: 87; NAYS: 4

SENATE
2ND READING: 4/23, BE CONCURRED IN
3RD READING: 4/23, YEAS: 47; NAYS: 3

TRANSMITTED TO GOVERNOR: 4/29
ACTION: 5/1, SIGNED
CHAPTER 579

SB 130 -- ETCHART, BOYLAN -- EXEMPTING NEW AGRICULTURAL EQUIPMENT HELD BY DEALERS FROM PROPERTY TAXES.
FISCAL NOTE: REQUIRED
INTRODUCED: 1/14
REFERRED TO COMMITTEE ON TAXATION: 1/14
HEARING: 1/26
FAILED TO MEET TRANSMITTAL DEADLINE: 4/6 -- DIED

SB 131 -- BOYLAN -- AMENDING 76-3-501 TO REQUIRE SUBDIVIDERS TO CONSTRUCT AND MAINTAIN FENCES...
INTRODUCED: 1/14
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 1/14
HEARING: 1/24
REPORT: 2/21, DO PASS AS AMENDED
2ND READING: 2/24, DO PASS AS AMENDED
3RD READING: 2/25, YEAS: 48; NAYS: 1

TRANSMITTED TO HOUSE: 2/25
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 3/2
HEARING: 3/5
REPORT: BE NOT CONCURRED IN, 3/21
REPORT: ADOPTED, 3/24
BILL KILLED: 3/24 YEAS: 76; NAYS: 22

SB 132 -- KEATING -- AMENDING 39-5-102 TO EXEMPT PROFESSIONAL ATHLETE AGENTS FROM EMPLOYMENT AGENCY PROVISIONS.
INTRODUCED: 1/14
REFERRED TO COMMITTEE ON LABOR AND EMPLOYMENT: 1/14
HEARING: 1/27
REPORT: 1/27, DO PASS
2ND READING: 1/29, DO PASS
3RD READING: 1/31, YEAS: 46; NAYS: 2

TRANSMITTED TO HOUSE: 1/31
REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT: 2/2

47TH LEGISLATIVE SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

| BILL NO. | ENTERED COMM. | DATE CONSIDERED | OUT OF COMM. | DO PASS DATE | DO NOT PASS DATE | DO PASS AS AMEND. DATE | BE CONCURRED IN DATE | BE CONC. IN AS AMENDED DATE | BE NOT CONCURRED IN DATE |
|---|---|---|---|---|---|---|---|---|---|
| SB #32 | 1/5/81 | 1/8/81 | 1/13/81 | 1/13/81 | | | | | |
| SB #52 | 1/5/81 | 1/8/81 | 1/13/81 | | | 1/13/81 | | | |
| Re-ref. SB #52 | 1/15/81 | | 1/22/81 | | 1/22/81 | | | | |
| SB #60 | 1/5/81 | 1/8/81 | 1/20/81 | | | 1/20/81 | | | |
| SB #64 | 1/6/81 | 1/13/81 | 1/13/81 | 1/13/81 | | | | | |
| Re-ref. SB #64 | 1/17/81 | 1/29/81 | 2/10/81 | 2/10/81 | | | | | |
| SB #101 | 1/12/81 | Stays in | Committee | | | | | | |
| SB #128 | 1/14/81 | 1/20/81 | 1/27/81 | 1/27/81 | | | | | |
| SB #132 | 1/14/81 | 1/27/81 | 1/27/81 | 1/27/81 | | | | | |
| SB #191 | 1/19/81 | 1/27/81 | 1/27/81 | | 1/27/81 | | | | |
| SB #198 | 1/20/81 | Stays in | Committee | | | | | | |
| SB #226 | 1/21/81 | 2/3/81 | 2/10/81 | | | 2/10/81 | | | |
| SB #313 | 1/28/81 | 2/5/81 | 2/17/81 | | | 2/17/81 | | | |
| SB #318 | 1/29/81 | 2/5/81 | 2/10/81 | | 2/10/81 | | | | |
| SB #360 | 2/3/81 | 2/12/81 | 2/17/81 | 2/17/81 | | | | | |
| SB #378 | 2/6/81 | 2/12/81 | 2/19/81 | | 2/19/81 | | | | |

Use a separate sheet for Senate, House Bills, and Resolutions.

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MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 20, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Nelson on January 20, 1981, in Room 404 of the State Capitol at 1:00 p.m.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF SENATE BILL 128: Chairman Nelson called on Senator Bill Norman, sponsor of SB 128, to explain the bill to the Committee. This bill is an act requiring that a disability be supported by a preponderance of medical evidence; defining "impairment" and "disability". Senator Norman stated that the subject of the bill relates to the workers compensation court and relates to disability. Senator Norman explained the terms "impairment" and "disability" to the Committee.

PROPONENTS OF SENATE BILL 128: Mr. Greg Groepper, representing the Department of Labor & Industry, stated they are in support of SB 128. They feel it would make for easier administration.

Mr. George Wood from Missoula, Montana, representing Montana Self-Insurers Association, stated they support SB 128.

Mr. A. B. Pillen, representing Workers' Compensation Division, stated they support the bill.

There were no opponents present at the hearing so Chairman Nelson called on Senator Norman to make closing remarks on SB 128.

QUESTIONS ON SENATE BILL 128: Senator Aklestad wanted language clarification of "temporary" and "total". Senator Norman explained the terms to the Committee.

Senator Ryan asked about definition of "preponderance of medical evidence". Senator Norman stated that you weigh these things--one has to weigh more than the other.

There was general discussion regarding language in the bill.

Mr. Pillen stated that language clarification would aid in administration.

Since there were no further questions, the hearing was closed on SB 128.

CONSIDERATION OF HOUSE BILL 77: Chairman Nelson introduced Representative Hal Harper, sponsor of HB 77, to the Committee,

ACTION ON HOUSE BILL 77: Senator Aklestad moved that House Bill 77 Be Concurred In. Staff Attorney, Katherine Orr, explained the bill to the Committee once again since Senator Goodover had missed the explanation at the hearing.

There was a unanimous vote by all Committee members present that HOUSE BILL 77 BE CONCURRED IN.

ACTION ON SENATE BILL 128: Since Senator Norman was not present at the meeting, it was decided to hold up voting on SB 128.

Senator Hafferman moved that Senate Bill 128 Do Pass. Senator Anderson asked Attorney Orr to explain the words "preponderance of medical evidence" to the Committee. After the explanation by Ms. Orr, Senator Hafferman stated he would withdraw his motion.

Attorney Orr said that she had talked with Laury Lewis from the Workers' Compensation Division and there appears to be a problem with language in the bill. He would like to have the word "medical" taken out of the weight of evidence standard for determining disability and he would like to have a preponderance of medical evidence standard added to the determination of impairment.

Senator Aklestad stated that he thought the Committee should wait until Senator Norman is present to make a decision on SB 128. The Committee decided to do this, so NO ACTION WAS TAKEN ON SB 128 at this meeting.

ACTION ON SENATE BILL 52: Senator Aklestad asked Attorney Orr exactly what was repealed under this act. Ms. Orr stated that what was repealed under Senate Bill 52 are provisions in the Maternity Leave Act requiring: 1) Adjudication of a complaint within 60 days, 2) District Court enforcement of the Commissioner's decision (under 39-7-209) 3) The definition of Commissioner, and 4) a) The Commissioner of Labor would not investigate cases, and b) relatedly, the Human Rights Commission would investigate claims and could initiate claims on its own.

The effects of putting the Maternity Leave Act provision under the auspices of the Human Rights Commission are: 1) All claims must be filed within 180 days, 2) The Human Rights Commission must informally attempt to settle claims, and 3) There is no sixty-day limitation on the time of adjudication by the Human Rights Commission.

Senator Aklestad asked Ms. Orr how many cases have been filed under the Maternity Leave Act with the Human Rights Commission. Ms. Orr stated that 23 cases in fiscal years 1978-1980 were filed with the Human Rights Commission, and 14 cases were filed in the Department of Labor under the Maternity Leave Act.

Senator Goodover asked how prevalent the problem is that Senator Elliott described. Mr. Laury Lewis stated that there is a problem, and in many instances the penalties are waived, but as long as it is funded through fines and penalties, there will be a problem.

There was general discussion about the funding of the Unemployment Insurance Fund.

Chairman Nelson asked Senator Elliott to make closing statements on SB 191. Senator Elliott stated that many small-business employers cannot afford the insurance premium.

Senator Nelson called the hearing on Senate Bill 191 closed.

ACTION ON SENATE BILL 128: Senator Anderson moved that Senate Bill 128 Do Pass. Senator Goodover seconded the motion. On a Roll Call Vote, SENATE BILL 128 PASSED by a 5-1 vote. Senators Aklestad and Hafferman passed on voting. This Roll Call Vote is attached.

ACTION ON SENATE BILL 191: Senator Anderson made a motion that Senate Bill 191 Do Not Pass. Senator Anderson feels that SB 191 should not pass because: 1) The interest rate is too low, 2) The fund is in trouble, and 3) Every employer is on notice of workers' compensation requirements.

On a Roll Call Vote, the Committee voted unanimously that SENATE BILL 191 DO NOT PASS. This Roll Call Vote is attached.

ACTION ON SENATE BILL 132: Senator Anderson made a motion that Senate Bill 132 Do Pass. The Committee voted unanimously with the exception of Senator Goodover that SENATE BILL 132 DO PASS. Senator Goodover passed on the vote because he was not present at the time SB 132 was considered.

ADJOURN: There being no further business, the meeting adjourned at 2:25 p.m.

Harold C. Nelson

Senator Harold C. Nelson, Chairman

mln

# STANDING COMMITTEE REPORT

January 27, 19 81

MR. PRESIDENT

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration SENATE Bill No. 128

Respectfully report as follows: That SENATE Bill No. 128

DO PASS

S.A.

Chairman.

STATE PUB. CO.
Helena, Mont.

LABOR AND INDUSTRY COMMITTEE

47th Legislature

| Bill No. | Subject Matter | Date In | Sponsor | Hearing Date | Committee Action | Date Out |
|---|---|---|---|---|---|---|
| HB 430 | Repeals the restaurant, bar and tavern wage protection act. | 1/23 | Underdal | 2/2 | Do Pass | 2/17 |
| Intrd. St. HB 464 | Clarifies the law regarding disqualifications for extended unemployment insurance benefits; redefines the disqualification for extended benefits for failure to accept work, etc. | 1/24 | Ellerd | 2/5 | Do Pass As Amended | 2/10 |
| HB 190 | Act to exclude tips from the minimum wages requried to be paid to employees. | 1/24 | Waldron | 2/10 | Do Not Pass | 2/17 (Even. meeting) |
| HB 544 | Provides that leave for state, city, or county employees to attend militia or reserve encampments be without pay. | 1/28 | Sivertsen | 2/5 | Do Not Pass | 2/10 |
| HB 557 | Act to raise the state minimum wage. | 1/30 | Brown | 2/10 | Do Pass As Amended | 2/17 (Even. meeting) |
| SB 128 | Disability be supported by a preponderance of medical evidence; defining impairment and disability | 2/2 | Norman Elliott | 2/17 | Be Concurred In | 2/19 |

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES
February 17, 1981

The House Labor and Employment Relations Committee convened at 12:30 p.m., on February 17, 1981, in Room 129 of the State Capitol with Chairman Ellerd presiding and all members present.

Chairman Ellerd opened the meeting to a hearing on SBs 132, 128 and 32.

SENATE BILL 132

SENATOR THOMAS F. KEATING, District 32, chief sponsor, said the bill would exempt agents of professional athletes from the provisions governing employment agencies. He said professional teams are growing in number. He said now anyone who assists a professional athlete for a fee is considered an employment agency. The Employment Agency Act has a number of requirements. It has requirements on advertising and in most cases no advertising takes place. The Act has certain restrictions on commissions and charges that can be made. All of these restrictions interfere with the right of people to come together and negotiate a contract to engage one of the parties for the service. He said it is not reasonable to require that these two individuals be restricted in this manner. Also the agent would have to apply for a license for the purpose of being in business. Since lawyers and accountants are already licensed, this would mean another license.

There were no other proponents and no opponents. Senator Keating had no closing statement.

SENATE BILL 128

SENATOR BILL NORMAN, District 47, chief sponsor, said the bill relates to Workers' Compensation Court. As you recall back over the years, a series of bills were introduced and finally the legislature did very well getting a lot of those settled, and established a Workers' Comp Court. It has the same standing as a District Court and cases can go directly to the Supreme Court from it. This bill talks about disability which often constitutes most of the work of this court. It is necessary to understand the concept of impairment. This is a medical determination. If you have no impairment you have no disability. The disability takes many things into consideration besides impairment. Can the worker be retrained and other factors. Disability can't be resolved in court until you resolve impairment. The court must use what is called preponderance of evidence. This is nothing new - as old as laws itself. In other words you would say the evidence is more probable, more credible, more convincing - it has preponderance You have to reflect from testimony presented by witnesses - which is more closely associated, has made better observations, is more satisfactory. Why doesn't a court just do this? It hasn't. That is why this bill. It directs the comp courts to do as the other courts do. To clear up impairment - if a musician and a truck driver looses the tip of his finger - the impairment would be the same but not the disability.

GEORGE WOOD, Montana Self-Insurers Association, Missoula, spoke in support of the bill and a copy of his testimony is EXHIBIT 1 and part of the minutes.

ALBERT G. PILLEN, State Compensation Insurance Fund Bureau, Labor and Industry Dept., said they stand in support of the bill. He said he was very much in favor of having these definitions in the Act.

JIM MURRY, Ex. Secretary of the Montana State AFL-CIO, said he was serving as a member of the Workers' Compensation Advisory Board. He said he would like to go on record as supporting the bill.

GREG GROEPPER, Department of Labor, said this is administratively attached under their department. They are in support of the bill.

There were no opponents. Chairman Ellerd opened the hearing to questions from the committee. Rep. Dozier questioned the words on page 6, lines 5 and 6 - definition of disability. Why not the words "in his normal employment." Couldn't this push the guy into pushing pencils as he could be gainfully employed out of his usual work. Mr. Wood responded he might not have been doing his normal work at the time of his injury. Even with rehabilitation he might not be able to return to the work he was doing before. He said this is defined elsewhere in the act.

Rep. Keedy asked concerning the definition of partial disability on page 4, line 3. Is it necessary to further enumerate definitions that seem to have been covered in other parts of the law and so have clutter. Senator Norman said it puts in permanent partial disability and temporary total disability. He asked Rep. Keedy if it was his understanding that it is now in the books. Rep. Keedy asked why in light of what seems to be quite detailed explanation of different kinds of disability, come in with a new section that defines disability itself. Mr. Pillen said the definitions need to be in there to clarify In the course of handling these cases the definitions are important to be in there. So many adjustors don't read the court cases and without these definitions they don't understand the difference between disability and impairment. They tend to settle on the impairment rather than the disability.

Senator Norman just closed.

SENATE BILL 32

SENATOR BILL NORMAN, District 47, chief sponsor, said this is also a work comp bill. This bill relates to the workers' comp court and the adjustor. If an employee is injured on the site he has virtually no difficulty establishing that the employer is liable. He said what they are trying to do with the bill is to keep workers' comp cases in the workers' comp court. If an adjustor is not doing a good job a charge should be brought against him in the workers' comp court. What is happening is the employee is trying to get into district court

Rep. Keedy amended his motion to provide in the bill to grant power to the Department of Revenue to pull licenses when an employer is not in compliance.

Rep. Seifert said he believed that was discussed and the licenses were usually put up for collateral.

Rep. Underdal said he realizes what Rep. Keedy is trying to do. He felt there was no way to amend this bill. He said he was not against regulations that make sense. He also felt it was fairly late in the session to put in a bill. Another session perhaps.

Rep. Keedy withdrew his motion.

SENATE BILL 132 - Rep. O'Connell moved BE CONCURRED IN. This motion carried unanimously. Rep. Underdal moved it be placed on THE CONSENT CALENDAR. This motion carried unanimously.

SENATE BILL 128 - Rep. Harper moved BE CONCURRED IN. Rep. Keedy moved to amend by inserting "A claim of" before "disability" in the new language of the bill and in the title. Rep. Harper felt this would change the intent of the Act. This deals with disability and not a claim. Prove a certain degree of disability and not a claim of disability. Rep. Keyser felt Rep. Harper was correct. We are talking on what disability is and how to prove it. Rep. Keedy withdrew his motion.

Chairman Ellerd said due to a lack of time the bill would be held until the next meeting.

Meeting adjourned at 2:40 p.m.

Respectfully submitted,

Robert Ellerd

ROBERT ELLERD, CHAIRMAN

eas

GEORGE WOOD
Executive Secretary

# MONTANA SELF-INSURERS ASSOCIATION

Box 2899
MISSOULA, MONTANA 59806
(406) 543-7195

MY NAME IS GEORGE WOOD AND I ARISE IN SUPPORT OF SENATE BILL 128.

SENATE BILL 128 DEFINES TWO TERMS COMMONLY USED IN THE ADMINISTRATION AND ADJUDICATION OF WORKERS' COMPENSATION CLAIMS. THE TERMS ARE NOT PRESENTLY DEFINED IN THE ACT AND ARE SOMETIMES USED SYNONYMOUSLY AND INCORRECTLY.

IMPAIRMENT IS PURELY A MEDICAL CONDITION WHICH MEANS ANY ANATOMIC OR FUNCTIONAL ABNORMALITY OR LOSS OF BODY FUNCTION AFTER MAXIMUM MEDICAL REHABILITATION HAS BEEN ACHIEVED. AN IMPAIRMENT RATING IS STRICTLY A MEDICAL DETERMINATION. IMPAIRMENT MAY OR MAY NOT RESULT IN DISABILITY.

DISABILITY IS A LEGAL OR ADMINISTRATIVE TERM. DISABILITY MEANS A REDUCTION IN THE ABILITY OF THE INJURED WORKER TO ENGAGE IN GAINFUL EMPLOYMENT, AS A RESULT OF IMPAIRMENT CAUSED BY AN ON THE JOB INJURY WHEN THE IMPAIRMENT IS CONSIDERED WITH OTHER FACTORS AFFECTING THE WORKER'S ABILITY TO ENGAGE IN GAINFUL EMPLOYMENT. SOME OF THESE OTHER FACTORS WOULD BE AGE, EDUCATION, AND WORK HISTORY.

THE BILL REQUIRES THAT DISABILITY BE SUPPORTED BY A PREPONDERANCE OF MEDICAL EVIDENCE. JURY INSTRUCTION NUMBER 21 OF THE MONTANA JURY INSTRUCTION GUIDE IS AS FOLLOWS: " BY A PREPONDERANCE OF THE EVIDENCE IS MEANT SUCH EVIDENCE AS, WHEN WEIGHED WITH THAT OPPOSED TO IT, HAS MORE CONVINCING FORCE AND FROM WHICH IT RESULTS THAT THE GREATER PROBABILITY OF TRUTH IS THEREIN."

THE BILL WOULD REQUIRE THE SAME STANDARDS FOR DETERMINING THAT A DISABILITY EXISTS, FROM THE MEDICAL EVIDENCE, AS IS REQUIRED IN CIVIL JURY CASES IN MONTANA.

I, THEREFORE, RESPECTFULLY REQUEST THAT WHEN THIS COMMITTEE DOES ARISE THAT IT WILL REPORT SENATE BILL 128 - DO PASS.

GEORGE WOOD
Executive Secretary

GEORGE WOOD
Executive Secretary

# MONTANA SELF-INSURERS ASSOCIATION

Box 2899
MISSOULA, MONTANA 59806
(406) 543-7195

MY NAME IS GEORGE WOOD AND I ARISE IN SUPPORT OF SENATE BILL 32.

THIS BILL WILL CLARIFY THE "EXCLUSIVE REMEDY" OF A WORKER FOR INJURIES THAT OCCUR ON THE JOB.

IN 1915 WHEN THE WORKERS' COMPENSATION ACT WAS ORIGINALLY ENACTED, THE WORKER GAVE UP HIS RIGHT UNDER COMMON LAW TO SUE HIS EMPLOYER FOR AN ON THE JOB INJURY. THE EMPLOYER GAVE UP HIS DEFENSES: (1) THAT THE EMPLOYEE WAS NEGLIGENT; (2) THAT THE INJURY WAS CAUSED BY THE NEGLIGENCE OF A FELLOW EMPLOYEE; (3) THAT THE EMPLOYEE HAD ASSUMED THE RISKS INHERENT IN, INCIDENT TO, OR ARISING OUT OF HIS EMPLOYMENT, OR ARISING FROM THE FAILURE OF THE EMPLOYER TO PROVIDE AND MAINTAIN A REASONABLY SAFE PLACE TO WORK, OR REASONABLY SAFE TOOLS OR APPLIANCES. THE EMPLOYER AGREED TO PROVIDE, ON A "NO FAULT" BASIS, THE BENEFITS PROVIDED BY STATUTE. THE LEGISLATURE PROVIDED A FORUM FOR ADJUDICATING OF DISPUTED CLAIMS, THE WORKERS' COMPENSATION COURT. THE LEGISLATURE PROVIDED PENALTIES FOR IMPROPER HANDLING OF CLAIMS, ATTORNEYS FEES, AND A 20% INCREASE IN COMPENSATION BENEFITS THAT WERE UNPAID.

THE EMPLOYER HAS FELT THROUGH ALL THESE YEARS THAT THE PROVISIONS OF THE WORKERS' COMPENSATION ACT PROVIDED THE EXCLUSIVE REMEDY FOR EMPLOYEES INJURED ON THE JOB AND THAT COLLATERAL ATTACK UNDER COMMON LAW WAS PROHIBITED.

RECENT SUPREME COURT DECISIONS INDICATE THAT COLLATERAL ATTACK WAS PERMITTED. THE EXCLUSIVE REMEDY WOULD SEEM TO BE LIMITED TO THE ACCIDENT ONLY.

THIS BILL WOULD CORRECT THE DECISIONS. THE BILL STATES THAT, "AN EMPLOYER IS NOT SUBJECT TO ANY LIABILITY WHATEVER FOR THE DEATH OR OF PERSONAL INJURY TO AN EMPLOYEE CAUSED BY AN ACCIDENT, OR FOR ANY ACTS OF THE EMPLOYER OR HIS SERVANT OR AGENT DURING THE INVESTIGATION OR DURING THE COURSE OF MANAGEMENT OF A CLAIM COVERED BY THE WORKERS' COMPENSATION ACT.

IT DOES NOT PREVENT THE INJURED WORKER FROM BRINGING A COMMON LAW ACTION FOR INTENTIONAL TORTS, FRAUD - COERCION AND THE LIKE.

IT DOES PREVENT THE INJURED WORKER FROM FILING AN ACTION, EXCEPT IN THE WORKERS' COMPENSATION COURT, FOR MISUNDERSTANDINGS, MISMANAGEMENT, AND DISAGREEMENTS OVER THE AMOUNT OF THE BENEFITS.

IT RETURNS THE "EXCLUSIVE REMEDY" PROVISIONS OF THE WORKERS' COMPENSATION ACT TO THE STATUS OF THAT WHICH WAS UNDERSTOOD TO EXIST SINCE 1915.

I, THEREFORE, RESPECTFULLY REQUEST THAT WHEN THIS COMMITTEE DOES ARISE THAT IT WILL REPORT SENATE BILL 32 -- DO PASS.

GEORGE WOOD
Executive Secretary

PROPOSED AMENDMENTS - HB 557

1. Page 1, line 14.
Strike: "$2.95"
Insert: "$2.50"

2. Page 1, line 16.
Strike: "$3.25"
Insert: "$2.75"

3. Page 2, line 11.
Strike: "$680"
Insert: "$575"

4. Page 2, line 13.
Strike: "$750"
Insert: "$635"

5. Page 2
Following: line 14
Insert: "(3)(a) An employer may apply a credit against the wages due a tipped employee by an amount not to exceed 20% of the state minimum wage, except that an employer subject to the federal fair labor standards act, 29 U.S.C. 201 through 219, may apply a credit in an amount as defined in section 203 of that act.

(b) Such a credit may not be taken by an employer against the wages due a tipped employee unless:

(i) the employee receives tips equal to or in excess of the amount of credit;

(ii) the employee has been informed by the employer of the provisions of this section; and

(iii) all tips received by such employee or deposited in or about a place of business for services rendered by the employee have been retained by the employee.

(c) No employer may require an employee to share a tip with the employer or other employees. However, nothing contained in this subsection prevents an employee from voluntarily and on an individual basis sharing his tips with other employees."

6. Amend 39-3-402, the definition section of this part to read:
"(8) "Tipped employee" means an employee engaged in an occupation in which he customarily and regularly receives tips, on a monthly basis, at an amount as defined in the federal fair labor standards act, 29 U.S.C. 203 (t), as amended."

7. Amend 39-3-406, which defines those employees excluded from the provisions of 39-3-404 and 39-3-405 (minimum wage and overtime compensation sections). Add another exclusion which reads:
"(1) an employee who is under 16 years of age."

TOM SCHNEIDER, Montana Public Employees Association, said that HB 11 was in the Senate Labor Committee being held to see what will happen to this bill. He said they really don't care if the hours are 120 or 80 but they should be the same for both bills. He said they support the bill for their state employees. It is a good tool for management to produce better government for the same money or less.

JERRY DRISCOLL, Laborers' Union, said they are a proponent of the amendment. It should be consistent.

In closing, Rep. Meyer said he had no problem with the amendment.

Chairman Ellerd closed the hearing and opened the meeting to a consideration of the following bills. Rep. Keedy had left his vote with the Chairman on certain bills.

HOUSE BILL 332 - Rep. Keyser moved to TABLE the bill. Rep. Schultz said he feels this needs to be addressed in the next session. The question was called and the motion carried unanimously with those present. Absent at the moment were Reps. Keedy, Seifert, Harrington and Hanson.

SENATE BILL 32 - Rep. O'Connell moved DO PASS. Rep. Harper made a substitution motion of DO NOT PASS. He said this bill just eliminates some irresponsible insurance adjustors. Any intentional acts of fraud with this bill could only be tried by the Workman's Comp Court and they don't have the ability for those kind of cases. This bill prevents the cases being taken to district court so there are no safeguards against abuses by an adjustor. He moved a motion for all motions pending to amend on page 1 by striking line 3 in its entirety. The motion to amend carried unanimously with those present. Question was called on the motion of DO NOT PASS AS AMENDED. The motion carried with 11 voting aye, 5 no (Reps. Ellerd, Underdal, Sivertsen, Seifert and Briggs), 1 absent (Hanson).

SENATE BILL 128 - Rep. Menahan moved DO PASS and the motion carried with 15 voting aye, 1 no (Keedy) and 1 absent (Hanson).

HOUSE BILL 750 - Rep. O'Connell moved to amend on line 18 after "insurer" to insert "upon request of the employer." Ms. Brodsy said she had drafted the bill for Rep. Meyer. Presently this information is available upon request of the employer.

Rep. Dozier said if the information is available upon the request of the employer, we are mandating a bunch of people to hand out a bunch of paper and what is the bill doing here.

Rep. Menahan said they could put on two more FTEs - since I'm for employment let's pass the bill without the amendment!